

M e m o r a n d u m

To : COMMISSIONERS
Delta Protection Commission

Date : December 29, 1995

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Subject : The Agricultural Land Stewardship Act -- SB 275 (Costa)

INTRODUCTION AND SUMMARY

At its December 14, 1995 meeting, the Commission expressed interest in receiving a written analysis of Senate Bill 275 (Costa), the "Agricultural Land Stewardship Act." SB 275 was enacted by the Legislature earlier this year and signed into law by Governor Wilson on October 14, 1995. A copy of the chaptered version of the new legislation (Cal.Stats. 1995, ch. 931) is attached.

The Agricultural Land Stewardship Program Act creates a program of monetary grants from the California Department of Conservation to facilitate the acquisition of agricultural conservation easements by local governments and private non-profit corporations. This new legislation takes effect on January 1, 1996.

I. BACKGROUND

The legislative history of SB 275 indicates that the Agricultural Land Stewardship Program originated from a recommendation of the Agricultural Lands Task Force appointed by Governor Wilson in 1992. (1995 STATENET, Cal.Comm.Anal., April 3, 1995, p.29.) That task force, charged with a review of the effectiveness of state and local programs for the conservation of agricultural lands, concluded that the State of California should undertake a stronger program of conservation. (Id.)

The primary, existing state program for the preservation of agricultural land is the California Land Conservation Act of 1965. (Gov. Code § 51200 et seq. (the "Williamson Act").) The Williamson Act authorizes contractual agreements between landowners and counties which limit privately-owned lands to agricultural use for a fixed term, in exchange for preferential

property tax assessments. (Gov. Code § 51240 et seq.) However, the Williamson Act does not provide for the acquisition of agricultural conservation easements.

Easement programs do exist for the conservation of California open space generally, including agricultural lands. (See, e.g., the Open Space Easement Act of 1974 (Gov. Code § 51070 et seq.); and the Conservation Easement Act (Civil Code § 815 et seq.)) These existing laws generally allow property owners to keep their land in agriculture or other open space uses, while transferring development rights applicable to those lands to other parcels. (See, e.g., Gov. Code § 51075, which provides for a 10-year open space contract.)^{1/} None of these, however, targets only agricultural land, as does the Agricultural Land Stewardship Program.^{2/}

II. SUMMARY OF SB 275'S PROVISIONS

A. Easements

An agricultural conservation easement is defined in SB 275 as a less-than-fee-simple interest in land which represents the right to prevent development or improvement of the land for any purpose other than agricultural production. (Pub. Resources Code § 10211^{3/}.) The easements, which may be held by cities, counties or eligible non-profit organizations, are to be granted in perpetuity as the equivalent of covenants running with the land. (§ 10210.) The easements may be reviewed for possible termination after 25 years. (§ 10270.)^{4/}

An agricultural conservation easement does not prevent oil and

1. The Williamson Act (Gov. Code sec. 51200 et seq.) also restricts land for a 10-year period, although it imposes restrictions for agricultural use via contract, rather than through the creation of an easement.

2. SB 275's legislative history suggests that the agricultural conservation easements authorized under the new legislation constitute a specialized version of the conservation easement created by the above-cited Conservation Easement Act. 1995 STATENET, Cal. Comm. Anal. April 3, 1995 at p.32.

3. The Agricultural Land Stewardship Program Act is principally codified at Public Resources Code section 10200 et seq. All subsequent statutory references are therefore to the Public Resources Code, unless otherwise noted.

4. See "Termination," section II(G), infra.

gas development, utility lines, traditional rural enterprises, or farm buildings that do not impair the land's agricultural productivity. (§ 10262(a), (b), (c) and (f).) Also permitted, if specifically provided for in the easement, is construction of dwellings for the landowner's immediate family or for farmworkers. (§ 10262(d) and (e).)

B. State Grants

Under SB 275, the Director of the California Department of Conservation may award grants to qualified applicants from the Agricultural Land Stewardship Program Fund, which is created by this legislation. (§§ 10230, 10239.) Acquisition of easements, as well as certain improvements and planning functions, may be funded by the grants. (§§ 10246; 10251-10252.) SB 275 specifies that at least 90% of grant funds must be used to acquire easements; up to 10% may be expended for land improvements and "policy planning purposes." (§ 10230(c).)

Applicants can spend up to 10% of their grants for the "direct costs" of transferring and acquiring easements. (§ 10231(a).) Significantly, such direct costs include "costs associated with a loss in property tax revenues resulting from the acquisition of...agricultural conservation easements." (*Ibid.*) Each grant application must contain a matching component of at least 5% of the value of the grant, a donation of at least 10% of the value of the agricultural conservation easement, or an equivalent combination of the two. (§ 10233.)

C. Qualifications for Grant Applicants

SB 275 specifies that entities eligible to apply for grants from the Fund are cities, counties or non-profit organizations. (§ 10212.) An eligible non-profit organization is any such private organization that has among its purposed conservation of agricultural lands, and qualifies under federal Internal Revenue Code provisions as a tax-exempt organization. (§ 10221.)

D. Grant Criteria

Grant applicants must first demonstrate that their requests meet the "eligibility criteria" set by statute. (§ 10251.) A key provision is that the governing body of a local government applicant must formally approve the grant proposal by resolution. (§ 10251(c).)

Eligible applications are then evaluated by the California Department of Conservation under twelve identified "selection criteria." (§ 10252.) These criteria include the quality of the agricultural land and the demonstrated commitment of local

government to long-term agricultural land conservation.
 (§ 10252 (a) and (c).)

Once the eligibility and selection criteria have been met, the Director of the Department of Conservation may approve the grant applications only if the applicant: 1) agrees to place an easement on the subject property (§ 10239(a)); 2) sells the fee title to the subject property to a private landowner within three years of acquiring fee title (§ 10239(b)); and 3) reimburses the state Fund within 30 days of the land's sale, for the fair market value of the land, less the conservation easement's value and transaction costs. (§ 10239(c).)

State grants may also be made under SB 275 for land improvements to those lands protected by easements under this program or other conservation easement programs. (§ 10246.)

The Director of the Department of Conservation must act on an application for the acquisition of an agricultural conservation easement within 180 days of its receipt; failure to act "shall be deemed to constitute approval." (§ 10263.)

The Department of Conservation may adopt rules and regulations to implement this legislation. (§ 10250).^{5/}

E. Funding

SB 275 creates the Agricultural Land Stewardship Program Fund. (§ 10230(a).) Critically, no money is appropriated for the Fund under SB 275, nor has any independent source of funds yet been committed to fund the program. The statute does specify, however, that money from various sources may be deposited into the Fund: gifts, donations, proceeds from the sale of general obligation bonds, legislative appropriations, federal grants or loans, or other funds. (§ 10230(b).)

As a result of this lack of funding, the Department of Finance expressed concern during the Legislature's consideration of SB 275 that the legislation is an "empty vessel" (1995 STATENET, Cal.Comm.Anal. April 3, 1995, p.32.)

F. Eminent Domain

SB 275 prohibits a city or county from using eminent domain to acquire an agricultural conservation easement, unless requested to do so by the landowner. (§ 10232.) Once the easement has been created, and if an entity wants to acquire the fee

5. Any such rules must be adopted in accordance with the Administrative Procedure Act, Government Code § 11340 et seq. (See § 10240(c).)

interest in the property by eminent domain, the condemnor must:
a) pay the landowner the full, unrestricted value of the property (less the value of the easement); and b) pay the easement holder for the value of the easement. (§ 10261(a).)

G. Termination of Agricultural Open Space Easements

Recipients of grant funds must agree "to restrict the use of the land in perpetuity..." (§ 10237.) However, twenty-five years after an applicant sells an easement, the landowner can ask the Department for a review and possible termination of the easement. (§ 10270.) The Department may grant termination only if it makes specific findings, which includes a determination that termination is consistent with the purposes of this legislation and is in the public interest. (§ 10273(a)(1) and (2).) The affected local government must also consent to the termination. (§ 10272.) If the easement is terminated, the landowner must repurchase the easement by paying the difference between the land's fair market value and its restricted value. (§ 10276(a).) The funds obtained via such a repurchase go back to the State fund. (§ 10276(c).)

H. Reassessment

The California Constitution requires county officials to assess private property at its full cash value, unless it is "enforceably restricted" to open space use. (Cal. Const., Art. XIII, § 8.) "Enforceably restricted" property is assessed on its "use value," which is reflective of the property's income. (Rev. & Tax. Code § 402.1.) Existing law defines what constitutes an enforceable restriction, including Williamson Act contracts, open space and conservation easements. (See, e.g., Rev. & Tax. Code §§ 421, 422.) SB 275 adds sections 421.5 and 422.5 to the Revenue and Taxation Code to include land subject to an SB 275 agricultural conservation easement to the list of property which is enforceably restricted, thus making such land eligible for a use value assessment.

I. Impacts on Other Environmental/Land Use Legislation

1) California Environmental Quality Act (CEQA)

Early versions of SB 275 specifically stated that CEQA would apply to the creation of agricultural conservation easements. The bill was amended to simply incorporate consideration of CEQA policies and procedures in the selection criteria set forth in section 10252. Specifically, SB 275 requires assessment under CEQA of whether a city or county demonstrates a long-term commitment to agricultural land conservation. (§ 10252(c)(1).)

2) The Coastal Conservancy

SB 275 specifically recognizes the Coastal Conservancy's responsibilities for carrying out agricultural projects in the coastal zone, as set forth in Public Resources Code section 30103, and does not alter the Conservancy's role in administering state and federal funds designated for coastal agricultural preservation. (§ 10225.)

3) The Williamson Act

SB 275 explicitly states that it is not to be construed as an amendment to the Williamson Act. (§ 10226.)

III. ANALYSIS

SB 275 provides a specialized version of conservation easements, specifically adapted to agricultural lands. The legislation provides another vehicle whereby agricultural lands can be maintained in the face of the pressures of development.

SB 275 was supported by the Agricultural Council of California, the American Planning Association, the California Farm Bureau Federation, the Planning and Conservation League and the Sierra Club. (1995 STATENET, Cal.Comm.Anal., Jul.10,1995, p.20.)

Opposing the legislation was the California Business Properties Association. (Id.) That organization objected to the minimum term of open space easements funded under SB 275--twenty-five years--as compared to the length of a Williamson Act contract--ten years. (Cf. Gov. Code § 51705.) To address this concern, a trailer bill is planned for the 1996 legislative session to reduce the minimum term of agricultural conservation easements to ten years.

Notably, SB 275 currently provides that development shall not be limited on any property due to its proximity to land protected by an agricultural conservation easement. (§ 10227.)

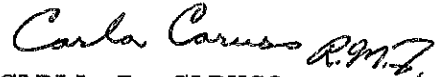
The key, current limitation of the Agricultural Land Stewardship Program Act is its lack of a current funding source, much less a permanent one. Indeed, the terms of SB 275 expressly preclude the Department of Conservation from expending funds to administer the Agricultural Land Stewardship Program until at least \$1,000,000 is made available to the program. (§ 10240(a).) In recognition of this problem, state and local officials, together with affected interest groups, are attempting to secure a source of funding to implement SB 275. Those efforts are likely to intensify in the first part of 1996.

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December 29, 1995
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Please let us know if you have any questions about SB 275, or desire further information about this new and significant legislation.



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Deputy Attorney General

attach.

cc: Margit Aramburu (w/attach.)

Senate Bill No. 275

CHAPTER 931

An act to add Division 10.2 (commencing with Section 10200) to the Public Resources Code, and to add Sections 421.5 and 422.5 to the Revenue and Taxation Code, relating to agricultural land conservation.

[Approved by Governor October 14, 1995. Filed
with Secretary of State October 16, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 275, Costa. Agricultural land conservation.
Existing provisions of the California Land Conservation Act of 1965 (the Williamson Act) authorize any city or county to contract to limit the use of agricultural land for preservation purposes, as specified.

This bill would enact the Agricultural Land Stewardship Program Act of 1995, which would establish a program for grants from the Department of Conservation to local governments and nonprofit organizations, subject to prescribed requirements and in accordance with prescribed procedures, for the acquisition of agricultural conservation easements, as defined, and for incidental costs, as specified.

The bill would create the Agricultural Land Stewardship Program Fund consisting of money deposited from specified sources, to be available, upon appropriation, for purposes of the program.

The bill would prescribe eligibility and selection criteria for the making of grants. The bill would permit grants to be made for land improvements in accordance with prescribed criteria. The bill would prescribe related requirements, including requirements for the termination of agricultural conservation easements.

The bill would state the findings, declarations, and intent of the Legislature with respect to agricultural land conservation.

The people of the State of California do enact as follows:

SECTION 1. Division 10.2 (commencing with Section 10200) is added to the Public Resources Code, to read:

DIVISION 10.2. AGRICULTURAL LAND STEWARDSHIP PROGRAM OF 1995

CHAPTER 1. GENERAL PROVISIONS

Article 1. Title

10200. This division shall be known, and may be cited, as the Agricultural Land Stewardship Program Act of 1995.

Article 2. Findings and Declarations

10201. The Legislature hereby finds and declares all of the following:

- (a) The agricultural lands of the state contribute substantially to the state, national, and world food supply and are a vital part of the state's economy.
 - (b) The growing population and expanding economy of the state have had a profound impact on the ability of the public and private sectors to conserve land for the production of food and fiber, especially agricultural land around urban areas.
 - (c) Agricultural lands near urban areas that are maintained in productive agricultural use are a significant part of California's agricultural heritage. These lands contribute to the economic betterment of local areas and the entire state and are an important source of food, fiber, and other agricultural products. Conserving these lands is necessary due to increasing development pressures and the effects of urbanization on farmlands close to cities.
 - (d) The long-term conservation of agricultural land is necessary to safeguard an adequate supply of agricultural land and to balance the increasing development pressures around urban areas.
 - (e) A program to encourage and make possible the long-term conservation of agricultural lands is a necessary part of the state's agricultural land protection policies and programs, and it is appropriate to expend money for that purpose. A program of this nature will only be effective when used in concert with local planning and zoning strategies to conserve agricultural land.
 - (f) Funding is necessary to better address the needs of conserving agricultural land near urban areas.
10202. It is the intent of the Legislature, in enacting this division, to do all of the following:
- (a) Encourage voluntary, long-term private stewardship of agricultural lands by offering landowners financial incentives.
 - (b) Protect farming and ranching operations in agricultural areas from nonfarm or nonranch land uses that may hinder and curtail farming or ranching operations.

(c) Encourage long-term conservation of productive agricultural lands in order to protect the agricultural economy of rural communities, as well as that of the state, for future generations of Californians.

(d) Encourage local land use planning for orderly and efficient urban growth and conservation of agricultural land.

(e) Encourage local land use planning decisions that are consistent with the state's policies with regard to agricultural land conservation.

(f) Encourage improvements to enhance long-term sustainable agricultural uses.

Article 3. Definitions

10210. Unless the context otherwise requires, the definitions in this article govern the construction of this division.

10211. "Agricultural conservation easement" or "easement" means an interest in land, less than fee simple, which represents the right to prevent the development or improvement of the land, as specified in Section 815.1 of the Civil Code, for any purpose other than agricultural production. The easement shall be granted by the owner of a fee simple to the local government or a nonprofit organization for the Agricultural Land Stewardship Program. It shall be granted in perpetuity as the equivalent of covenants running with the land.

10212. "Applicant" means a city, county, or nonprofit organization that applies for a grant to acquire an agricultural conservation easement.

10213. (a) "Agricultural land" means prime farmland, farmland of statewide importance, unique farmland, farmland of local importance, and commercial grazing land as defined in the Guidelines for the Farmland Mapping and Monitoring Program, pursuant to Section 65570 of the Government Code.

(b) In those areas of the state where lands have not been surveyed for classification pursuant to subdivision (a), land shall meet the requirements of "prime agricultural land" as set forth in subdivision (c) of Section 51201 of the Government Code.

10214. "Department" means the Department of Conservation.

10215. "Director" means the Director of Conservation.

10216. "Fund" means the Agricultural Land Stewardship Program Fund created pursuant to Section 10230.

10218. "Husbandry practices" means agricultural activities, such as those specified in subdivision (e) of Section 3462 of the Civil Code, conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality.

10219. "Local government" means a city or county.

10220. "Local government program" means the policies and implementation measures of a local government to conserve agricultural land.

10221. "Nonprofit organization" means any private nonprofit organization which has among its purposes the conservation of agricultural lands, and holds a tax exemption as defined under Section 501(c)(3) of the Internal Revenue Code, and further qualifies as an organization under Section 170(b)(1)(A)(vi) or 170(h)(3) of the Internal Revenue Code.

10222. "Program" means the Agricultural Land Stewardship Program established under this division.

10223. "Secretary" means the Secretary of the Resources Agency.

Article 4. Administration

10225. The Legislature hereby finds and declares that, pursuant to Chapter 4 (commencing with Section 31150) of Division 21, the State Coastal Conservancy has responsibility for carrying out agricultural projects in the coastal zone, as defined in Section 30103. Nothing in this division shall be construed to alter the conservancy's responsibility for the administration of state or federal funds that are allocated for the purpose of preserving coastal agricultural lands. For projects in the coastal zone, the department shall consult with the State Coastal Conservancy in developing its policies, priorities, and procedures for the allocation of those state and federal moneys.

10226. Nothing in this division shall be construed to overrule, rescind, or amend any of the requirements prescribed in Chapter 7 (commencing with Section 51200) of Division 1 of Title 5 of the Government Code.

10227. No local government shall, in any way, limit development on any land solely because of the land's proximity to property that is protected by an agricultural conservation easement that is subject to this division.

CHAPTER 2. AGRICULTURAL LAND STEWARDSHIP PROGRAM

10230. (a) The Agricultural Land Stewardship Program Fund is hereby created.

(b) Money may be deposited into the fund from gifts, donations, proceeds from the sale of general obligation bonds, funds appropriated therefor by the Legislature, federal grants or loans, or other sources, to be available, upon appropriation, for the implementation of the program. The purposes of the program include the purchase of agricultural conservation easements, land improvement and planning grants, technical assistance provided by the department, technology transfer activities of the department,

and administrative costs incurred by the department in administering the program.

(c) Not to exceed 10 percent of all grants made by the department pursuant to this division may be made for land improvement purposes and policy planning purposes. Not less than 90 percent of funds available for grants pursuant to this division shall be expended for the acquisition of interests in land.

10231. (a) Money available from the fund shall be utilized in accordance with the expenditures and distribution authorized, required, or otherwise provided in the program for the acquisition of agricultural conservation easements. This includes all direct costs incidental to the acquisition of agricultural conservation easements, including costs associated with a loss in property tax revenues resulting from the acquisition of those agricultural conservation easements. Direct costs paid to local governments and nonprofit organizations shall not exceed 10 percent of the value of the easements for which the costs were incurred.

(b) The department may retain an amount, in accordance with subdivision (a) of Section 10240, from the fund for the cost of acquisitions for technical assistance, as appropriated by the Legislature, or for administrative purposes.

10232. The director shall not approve a grant if the local government requesting a grant has acquired, or proposes to acquire, the agricultural conservation easement through the use of eminent domain, unless requested by the owner of the land.

10233. Each application for a grant pursuant to this division shall contain a matching component of not less than 5 percent of the value of the grant or a donation of not less than 10 percent of the value of the agricultural conservation easement, or an equivalent combination thereof.

10234. Every application for a grant for the acquisition of agricultural conservation easements shall be accompanied by a resolution from the governing body of the local government in which the proposed easement is located certifying both of the following:

(a) The easement meets the eligibility criteria set forth in Section 10251.

(b) The easement has been approved by the appropriate local governmental governing body.

10235. (a) The director shall not disburse any grant funds until the applicant agrees that any agricultural conservation easement acquired shall be used by the applicant only for the purpose for which the funds were requested and that no other use, sale, or other disposition of the easement shall be permitted unless approved by the secretary or where the easement may be transferred to a public or private agency for management purposes.

(b) If a local government or nonprofit organization holding the easement is dissolved, it shall be transferred to an appropriate public or private agency as provided in this division.

(c) The easement, or any of its terms, may only be amended with the consent of all of the necessary parties to the easement, including the landowner, the applicant, and the secretary. The secretary shall determine that the amendment is not inconsistent with this section before it may be amended.

10236. If the funds are used for the acquisition of an agricultural conservation easement pursuant to a local transfer of development rights program, upon the sale of the easement and its attendant development rights, the local government or nonprofit organization which holds the easement shall reimburse the fund by an amount equal to the fair market value of the easement.

10237. The director shall not disburse any grant funds unless the applicant and seller agree to restrict the use of the land in perpetuity, subject to review after 25 years.

10238. The director shall not disburse any grant funds to acquire agricultural conservation easements which restrict husbandry practices.

10239. The director shall disburse funds to local governments or nonprofit organizations for the acquisition of fee title to agricultural land from owners only if all of the following conditions are met:

(a) The applicant agrees, upon acquisition of the property, to encumber the land with an agricultural conservation easement subject to Section 10262.

(b) The applicant sells the fee title subject to the easement to a private landowner within three years of the acquisition of the fee title.

(c) The applicant reimburses the fund by an amount equal to the fair market value of the land less the value of the easement and associated transaction costs within 30 days after the sale of the restricted fee title.

10240. (a) The department shall not expend any funds from the program to adopt rules, or develop and administer the program, until at least one million dollars (\$1,000,000) is deposited in the fund. At that level of funding, state administrative costs shall not exceed 14 percent. When at least seven million dollars (\$7,000,000) is deposited in the fund, state administrative costs shall not exceed 2 percent.

(b) The department shall adopt rules and regulations for the implementation of this division, including the standards, criteria, and requirements necessary for approval of local government programs for acquiring agricultural conservation easements, including the eligibility criteria provided in Section 10251. The department may examine alternative agreements for the purpose of evaluating the substantive and fiscal benefits of proposals under this program.

(c) Rules or regulations adopted by the department pursuant to this section shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part I of Division 3 of Title 2 of the Government Code).

10241. The department shall adopt the criteria necessary for its approval of grant applications from local governments and nonprofit organizations for the acquisition of agricultural conservation easements.

10242. The director shall review, and approve or disapprove, grant applications from local governments and nonprofit organizations for the acquisition of agricultural conservation easements on agricultural land or the acquisition of fee title to agricultural land pursuant to Section 10239.

10243. The department shall allocate available state funds to local governments and nonprofit organizations for the acquisition of agricultural conservation easements. However, no governmental agency shall condition the issuance of an entitlement to use on an applicant's granting of a fee interest or less than a fee interest in property pursuant to this chapter.

10244. To be eligible to receive funds pursuant to this division for the acquisition of agricultural conservation easements, a local government shall submit to the department documentation of its adopted general plan that demonstrates a long-term commitment to agriculture and agricultural land conservation, including a summary of goals, objectives, and policies and implementation measures that support that commitment.

10245. The program shall reimburse any school district which requests reimbursement for any net loss of property tax revenues occurring as a result of the program.

10246. Grants may be made for land improvements. Use of these grants shall be limited to the improvement of lands protected by agricultural conservation easements under the program, or of lands protected by other qualified conservation easement programs, if the improvement will directly benefit the lands protected by agricultural conservation easements under the program. If a proposed agricultural conservation easement project includes the use of grant funds for land improvement, that component shall be evaluated with respect to the extent to which it satisfies one or more of the following criteria:

(a) The improvement will enhance the agricultural value of the land protected by the easement, and promote its long-term sustainable agricultural use such as water supply development and revegetation of eroding streambanks.

(b) The improvement will increase the compatibility of agricultural operations with sensitive natural areas.

(c) The improvement will demonstrate new and innovative best management practices which have the potential for wide application.

(d) The proposed improvement includes the financial and technical involvement of other agencies, such as resource conservation districts, the Wildlife Conservation Board, the United States Consolidated Farm Services Agency, and the United States Natural Resources Conservation Service.

(e) The improvement is part of a coordinated watershed management plan or the equivalent.

CHAPTER 3. ELIGIBILITY AND SELECTION CRITERIA

10250. In reviewing applications pursuant to this division, the department shall determine whether the agricultural conservation easement meets the eligibility and selection criteria set forth in this chapter and conforms with any rules or regulations adopted by the department pursuant to this chapter.

10251. Agricultural conservation easements shall meet all of the following eligibility criteria prior to review pursuant to the selection criteria set forth in Section 10252:

(a) The parcel proposed for conservation is expected to continue to be used for, and is large enough to sustain, commercial agricultural production. The land is also in an area that possesses the necessary market, infrastructure, and agricultural support services, and the surrounding parcel sizes and land uses will support long-term commercial agricultural production.

(b) The applicable city or county has a general plan which demonstrates a long-term commitment to agricultural land conservation. This commitment shall be reflected in the goals, objectives, policies, and implementation measures of the plan, as they relate to the area of the county or city where the easement acquisition is proposed.

(c) The grant proposal is consistent with the city or county general plan, and the governing body of the city or county, by resolution, approves the grant proposal.

(d) Without conservation, the land proposed for protection is likely to be converted to nonagricultural use in the foreseeable future.

10252. If the department determines that the proposed agricultural conservation easement meets the eligibility criteria set forth in Section 10251, the proposal shall be reviewed based upon the extent to which it satisfies the following selection criteria:

(a) The quality of the agricultural land, based on land capability, farmland mapping and monitoring program definitions, productivity indices, and other soil, climate, and vegetative factors.

(b) The proposal meets multiple natural resource conservation objectives, including, but not limited to, wetland protection, wildlife habitat conservation, and scenic open-space preservation.

(c) The city or county demonstrates a long-term commitment to agricultural land conservation as demonstrated by the following:

(1) The general plan and related land use policies of the city or county.

(2) Policies of the local agency formation commission.

(3) California Environmental Quality Act policies and procedures.

(4) The existence of active local agricultural land conservancies or trusts.

(5) The use of an effective right-to-farm ordinance.

(6) Applied strategies for the economic support and enhancement of agricultural enterprise, including water policies, public education, marketing support, and consumer and recreational incentives.

(7) Other relevant policies and programs.

(d) If the land is in a county that participates in the Williamson Act (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of the Government Code), the land proposed for protection is within a county or city designated agricultural preserve.

(e) The land proposed for conservation is within two miles outside of the exterior boundary of the sphere of influence of a city as established by the local agency formation commission. Land within a city's sphere of influence may qualify for grants pursuant to this division if the city and county agree the land should be conserved.

(f) The applicant demonstrates fiscal and technical capability to effectively carry out the proposal. Technical capability may be demonstrated by agricultural land conservation expertise on the governing board or staff of the applicant, or through partnership with an organization that has that expertise.

(g) The proposal demonstrates a coordinated approach among affected landowners, local governments, and nonprofit organizations. If other entities are affected, there is written support from those entities for the proposal and a willingness to cooperate. The support of neighboring landowners who are not involved in the proposal shall be considered.

(h) The conservation of the land supports long-term private stewardship and continued agricultural production in the region.

(i) The proposal demonstrates an innovative approach to agricultural land conservation with a potential for wide application in the state.

(j) The amount of matching funds and in-kind services contributed by local governments.

(k) The price of the proposed easement purchase is cost-effective in comparison to the actual easement value.

(1) Other relevant considerations established by the director.

10253. Nothing in this chapter shall grant any new authority to the department to affect local policy or land use decisionmaking.

10254. Before an application for an agricultural conservation easement is granted by the department pursuant to the program, the entity that is applying for the easement shall provide public notice to parties reasonably likely to be interested in the property, including the county and city in which the property is located, conservation, agricultural, and development organizations, adjacent property owners, and the general public. Written notice shall be provided to adjacent landowners as indicated in the county tax rolls not less than 30 days before the entity applies for the easement. The notice to the county and city shall be provided not less than 30 days before the entity applies for the easement.

CHAPTER 4. AGRICULTURAL CONSERVATION EASEMENTS

10260. An applicant to the department shall select and retain an independent real estate appraiser to determine the value of the agricultural conservation easement, which shall be calculated by determining the difference between the fair market value and the restricted value of the property.

10261. (a) Whenever any entity exercises the power of eminent domain to acquire land subject to an agricultural conservation easement under this program, the condemnor shall pay just compensation to the owner of the land in fee and to the owner of the easement as follows:

(1) The owner of the land in fee shall be paid the full value which would have been payable to the owner but for the existence of the easement less the value of the easement at the time of condemnation.

(2) The owner of the easement shall be paid the value of the easement at the time of condemnation.

(b) The director may provide, by regulation, or, pursuant to the terms of the easement, that in the case of acquisition of the easement by a federal agency, that the agency shall agree to the amount of compensation paid for the easement that is determined pursuant to subdivision (a), or pay the current fair market value of the land subject to an agricultural easement. The director shall distribute the proceeds of a land sale that is made in accordance with the conditions set forth in subdivision (a).

10262. An agricultural conservation easement shall not prevent any of the following:

(a) The granting of leases, assignments, or other conveyances, or the issuing of permits, licenses, or other authorization, for the exploration, development, storage, or removal of oil and gas by the owner of the subject land, or for the development of related facilities or for the conduct of incidental activities, as long as the agricultural

productivity of the subject land and any multiple uses that made the acquisition a priority for selection under the program, are not thereby significantly impaired.

(b) The granting of rights-of-way by the owner of the subject land in and through the land for the installation, transportation, or use of water, sewage, electric, telephone, gas, oil, or oil products lines, stock water development and storage, energy generation, and fencing, provided that the agricultural productivity of the land and any multiple uses that made the acquisition a priority for selection under the program, are not significantly impaired by those activities.

(c) The construction and use of structures on the subject land that are necessary for agricultural production and marketing, including, but not limited to, barns, shops, packing sheds, cooling facilities, greenhouses, roadside marketing stands, stock water development and storage, energy generation, and fencing, provided that the agricultural productivity of the land and any multiple uses that made the acquisition a priority for selection under the program, are not significantly impaired by those activities.

(d) Construction and use of additional residences for the immediate family members, as defined in subdivision (c) of Section 51230.1 of the Government Code of the landowner, if provided for in the easement.

(e) Construction and use of structures on the subject land for the purpose of providing necessary housing for seasonal or full-time employees of the agricultural operation, if provided for in the easement.

(f) Customary part time or off season rural enterprises or activities, including, but not limited to, hunting and fishing, wildlife habitat improvement, predator control, timber harvesting, and firewood production, provided that the agricultural productivity of the land and any multiple uses that made the acquisition a priority for selection under the program, are not significantly impaired by those activities.

10263. The department shall act on an application for the acquisition of an agricultural conservation easement within 180 days of its receipt, and shall immediately notify the applicant in writing of approval or disapproval of the application in accordance with the criteria set forth in Sections 10251 and 10252.

10264. The director shall disapprove the application for the acquisition of an agricultural conservation easement in either of the following circumstances:

(a) The application does not satisfy the eligibility and selection criteria set forth in Sections 10251 and 10252.

(b) Clear title to the agricultural conservation easement cannot be conveyed.

(c) There is insufficient money in the fund to carry out the acquisition.

(d) Other acquisitions have a higher priority.
 10265. If the department disapproves the application for the acquisition of an agricultural conservation easement, the applicant shall be given written notice of the disapproval within 10 days of the decision of the department. The written notice shall state the reason for the disapproval of the application.

CHAPTER 5. TERMINATION OF AGRICULTURAL CONSERVATION EASEMENTS

10270. Twenty-five or more years from the date of sale of the agricultural conservation easement, the landowner may make a request to the department that the easement be reviewed for possible termination.

10271. To terminate the agricultural conservation easement, the local government in which the subject land is located shall undertake an inquiry to determine the feasibility of profitable farming on the subject land. The inquiry shall be concluded and a decision reached by the department within 180 days from the date of the request for termination. The inquiry shall include onsite inspection of the subject land, the holding of a public hearing in the county in which the subject land is located, held after adequate public notice of the hearing has been given and the preparation of a report documenting the findings of the department.

10272. An agricultural conservation easement may be terminated only with the approval of the city council of the city in which the subject land is located, or of the board of supervisors if the land is located in an unincorporated area.

10273. (a) For the department to approve the termination of the agricultural conservation easement, all of the following findings shall be made:

- (1) The termination is consistent with the purposes of this division.
 - (2) The termination is in the public interest.
 - (3) The termination is not likely to result in the removal of adjacent lands from commercial agricultural production.
 - (4) The termination is for an alternate use which is consistent with the applicable provisions of the city or county general plan.
 - (5) The termination will not result in discontinuous patterns of urban development.
 - (6) There is no land that is available and suitable for the use to which it is proposed that the restricted land be put to, or that development of the restricted land would provide more contiguous patterns of urban development than development of proximate unrestricted land.
- (b) As used in subdivision (a), the following terms have the following meaning:

(1) "Proximate unrestricted land" means land that is not restricted by an easement and which is sufficiently close to land that is restricted so that it can serve as a practical alternative for the use which is proposed for the restricted land.

(2) "Suitable for the use" means that the salient features of the proposed use can be served by land not restricted by an easement. The nonrestricted land may be a single parcel or may be a combination of discontinuous parcels.

10274. The uneconomic character of existing agricultural use shall not by itself be sufficient reason for termination of the agricultural conservation easement, unless the secretary determines there is no other reasonable or comparable agricultural use for the land. If the secretary determines that the existing use is uneconomic and that there is no other reasonable or comparable agricultural use of the land, termination of the easement may be approved by the secretary without making a finding pursuant to paragraph (6) of subdivision (a) of Section 10273.

10275. (a) The landowner's request for termination shall be accompanied by a proposal for a specified alternative use of the land. The proposal for the alternative use shall list those governmental agencies known by the landowner to have permit authority related to the proposed alternative use.

(b) The landowner requesting a termination shall be required to pay the total amount of the costs incurred by the local government responsible for the administration of proceedings related to the landowner's request for termination, if requested by the local government.

10276. (a) If the termination of the agricultural conservation easement is approved, the landowner shall repurchase the easement by paying to the fund the difference, at that time, between the fair market value and the restricted value. That difference shall be determined by an appraisal approved by the state and conducted at the landowner's expense.

(b) If the landowner fails to repurchase the agricultural conservation easement within 180 days of the appraisal, the landowner shall wait at least one year before reapplying to terminate the easement.

(c) Money received from the repurchase of agricultural conservation easements shall be deposited in the fund and shall be available, upon appropriation, for the purposes set forth in this division.

10277. If the termination of the agricultural conservation easement is not approved, the landowner may reapply for denied application.

SEC. 2. Section 421.5 is added to the Revenue and Taxation Code, to read:

421.5. For purposes of this article, the following terms have the following meaning:

(a) "Agricultural conservation easement" shall have the same meaning as a conservation easement, as defined in Section 815.1 of the Civil Code.

(b) "Open-space land" includes land subject to an agricultural conservation easement.

SEC. 3. Section 422.5 is added to the Revenue and Taxation Code, to read:

422.5. For the purposes of this article, open-space land is "enforceably restricted" within the meaning of Section 8 of Article XIII of the California Constitution if it is subject to an agricultural conservation easement.